

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
April 12, 2002**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on April 12, 2002. The meeting was tape recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Acting Chair Ann Scott Fulton was present for the meeting, along with Commission Member Mike Joyner.

MINUTES OF MARCH 8, 2002 MEETING

The Chairman asked Commission member Mike Joyner if he had any corrections or additions regarding the Commission minutes for the March 8, 2002, meeting. Commission member Joyner didn't have any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Joyner. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the agenda. The Chairman stated she found no conflicts of interest with regard to herself. Commissioner Joyner stated he had reviewed the agenda and found no conflict. So Ordered.

HEARING CASES - 56 listed.

I. OFFERS IN COMPROMISE

Chief Deputy Counsel Fred Gregory stated that the following cases were to be carried over:

- #1 – Tremont Music Hall
- #47 – V I P Showgirls
- #48 – Twin Peaks
- #49 – Polo Club
- #50 – Yellow Rose Café and Billiards
- #51 – Baby Dolls
- #53 – Yesteryears Goodtime Pub

Chief Deputy Counsel Fred Gregory stated that Jay Stephens was present to speak on behalf of #16 Ziggys by the Sea. Chief Deputy Counsel Fred Gregory stated that Mr. Stephens signed an Offer in Compromise. The charges were underage sale and being open to the public with a 20-day suspension or \$2,000.00 penalty. Mr. Stephens stated that he had shut down the business for 20 days and faxed in the signed offer. The Commission never received the signed offer. Mr. Gregory stated that he tried to confirm with ALE whether the business had indeed been closed for 20 days, from December 7, 2001 – December 27, 2001. Mr. Gregory said that he was unable to confirm whether the business was closed or open during the suspension period. Mr. Stephens presented records from Carteret County ABC Board, showing the dates of when the business had purchased liquor. Their records also showed that there were no purchases of Liquor from November 30, 2001 until December 27, 2001. Mr. Stephens also presented signed notarized statements from the owner/manager Thomas J. Jack, Michael Farrell, manager and Scott A. Zito, bartender, stating that to the best of their knowledge, they were closed from December 7, 2001 through December 27, 2001. The Chairman made a motion to give the permittee credit for the business being closed from December 7, 2001 through December 27, 2001. Seconded by Commissioner Joyner. So Ordered.

Assistant Counsel Tim Morse made comments about the following case:

#36 – Golden Harvest Community Mart – Attorney William Potter, was present to speak on behalf of his client; the permittee's attorney, Rufus Edmisten was out of town. Mr. Edmisten and Mr. Potter are old friends with the permittee. Mr. Potter stated that this was a campaign, first offense underage sale. Mr. Potter said that this business had been violation free for the entire nine year operation period. He asked that the Commission reduce the penalty. The Chairman asked how old the underage person was. Assistant Counsel Tim Morse, stated that the person was 17 years old. Mr. Potter stated that the clerk looked at the ID, but the clerk was new to the position and made a mistake. Commissioner Joyner asked if the clerk was fired. Mr. Potter confirmed that the clerk was fired. The Chairman said that she was willing to congratulate the permittee on their being in business for 9 years without a violation, but was not inclined to reduce the fine because their employee sold to an underage person. Seconded by Commissioner Joyner. So Ordered.

CLOSED SESSION – ONLY FOR ABC ATTORNEYS AND ABC LEGAL STAFF

Beskind vs. Easley - Direct Shipping Case

AFTER THE CLOSED SESSION, THE COMMISSION RETURNED TO THE REGULAR COMMISSION AGENDA TO DISCUSS THE CASES AS FOLLOWS:

Assistant Counsel Tim Morse made comments about the following cases:

#2- Horne's Church Convenient Mart – Mr. Morse stated that the permittee never responded to the Commission. The case was petitioned for hearing and Administrative Law Judge Melissa Owens Lassiter recommended that the permittee's permits be suspended for 10 days and pay \$500.00. Mr. Morse said that he had received a phone call from the permittee's attorney, Mr. Clarence Kirk, at the last minute wanting to settle the case. The Chairman stated that she felt like the permittee waited too late in responding. Mr. Morse stated that Mr. Kirk, permittee's attorney, said that he felt like his client had a language problem. The Chairman made a motion to reject the Offer in Compromise and adopt the Recommended Decision of Administrative Law Judge Melissa Owens Lassiter, of 10-day suspension and payment of \$500.00. Seconded by Commissioner Joyner. So Ordered.

#34- Cubbard Express 4 – Mr. Morse stated that the permittee felt like they are checked over and over again and the only time they hear from the Law Enforcement is when they are called. The Chairman stated that she is very sympathetic to the permittee's whose clerks get Dismissals or First Offenders PJC's and it doesn't help the efforts being made to reduce underage sales, because the perpetrator of the idea to purchase is the underage person. The Chairman further stated that it is the permittee's responsibility to be really vigilante and he just had a violation 2 years ago. Mr. Morse stated that he didn't think the permittee was asking for mercy and he didn't recommend mercy. The Chairman made a motion to ratify the offer in this case. Seconded by Commissioner Joyner. So Ordered.

Assistant Counsel LoRita Pinnix made comments about the following case:

#31- Starlite Food Mart – Assistant Counsel LoRita Pinnix stated that she spoke with the agent and he was agreeable to whatever the Commission decided. The Chairman made a motion to remit \$1,000.00 of the \$1,300.00. The permittee would be ordered to pay \$300.00 or 15 days suspension of permits. Seconded by Commissioner Joyner. So Ordered.

OPEN DISCUSSION

Chief Deputy Counsel Fred Gregory made the following comments:

Mr. Gregory stated that there was frustration by the permittees, when their employees get off, but the permittee is still penalized and they were not even there at the time a violation took place. Commissioner Joyner stated that it does bother him and felt that it was a point of personal responsibility.

REMAINING OFFERS IN COMPROMISE

Neither the Chairman nor Commissioner Joyner had any questions or comments concerning any other cases as submitted. The Chairman made a motion that all the remaining cases be approved and ratified with the exception of #2, #16 and #31 which were already ratified. Motion seconded by Commissioner Joyner. So Ordered.

- II. ABC Store Location – Martin County. Administrator Michael Herring presented information regarding an ABC store relocation at Highway 70 West, in Wayne County. Agent Ron Gilliard with ALE District II, conducted an investigation and found that Wayne County ABC Board plans to close its store on Highway 70 West and reopen a new store at 1316 West Grantham Street, in the Little River Shopping Center in Goldsboro. The Wayne County Board currently has an option to lease 1,400 square feet of space in the Food Lion Shopping Center. The proposed property is currently owned by Coastal Equities, located in Garnett, New York. The nearest church is .3 of a mile and the nearest school is .3 of a mile from the proposed location. The sign regarding notice of intent to open an ABC store has been posted for 30 days in accordance with ABC Commission regulations. There is no conflict of interest. There are two objections to the proposed location. One objection is from the principal of Faith Christian School, who felt like it was his duty to object and the other is from the pastor of Faith Christian School. Mr. Herring made a recommendation to approve the location. The Chairman made a motion that the store relocation be approved, seconded by Commissioner Joyner. So Ordered.

OTHER BUSINESS

The Chairman discussed with Commissioner Joyner two issues brought forward by the distilled spirits industry. They requested that the Commission consider changing some of the restrictions of the spirits advertising. The changes are as follows:

- 1.) Permit on-premise calls on mixed beverages accounts by liquor brokers.
- 2.) Permit on-premise promotions and parity in marketing with the beer and wine industry.

The Chairman stated that the Commission will meet with the representatives of DISCUS (Distilled Spirits Council of the United States) and will ask them to

submit what specifically they want to see allowed. Then there will be established a committee of interested parties, such as the spirits brokers and staff, to discuss what types of activities they are interested in allowing, and work on developing guidelines for more extensive marketing opportunities such as there are for beer and wine.

The Chairman also stated that the Commission may be receiving a request on how the Commission interprets the wine tasting statute. The Chairman stated that no decision needed to be made today on any of these issues.

No other business, new or old, was heard. The Chairman made a motion to adjourn this meeting. Seconded by Commissioner Joyner. So ordered.

WITH no further business, the meeting adjourned.

Ann Scott Fulton, Acting Chair
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division